

REMARKS

Claims 1, 6-10, 13, 18-22, 25, and 30-34 are pending in the application.

Independent claim 1 is currently amended. Applicants respectfully submit that no new matter is added to currently amended claim 1.

Claims 1 and 6-10 stand rejected under 35 U.S.C. §101.

Claims 1, 6-10, 13, 18-22, 25, and 30-34 stand rejected under 35 U.S.C. § 102(e) as anticipated by U.S. Patent No. 6,980,962 to Arganbright.

Applicant respectfully traverses the rejections based on the following discussion. The following paragraphs are numbered for ease of future reference.

I. The 35 U.S.C. §101 Rejection

[0001] Claims 1 and 6-10 stand rejected under 35 U.S.C. §101 because the Office Action asserts that the claimed invention is directed to non-statutory subject matter, i.e., the claimed method is not tied to a particular machine or apparatus. (Final Office Action, mailed 06/04/2009, pages 2 and 3, section 4).

[0002] Applicants respectfully submit that independent claim 1 is currently amended, above, to tie the computer-implemented to that of a particular machine, i.e., a computer, in each of the claim 1's elements, as follows:

[0003] "A computer-implemented method, embodying a computer program of instructions executable by a computer, for learning consumer behavior, said method comprising:

inputting, to a computer, a shared business opportunity (SBO) tree ... ;

loading, by said computer, a node ... ;

identifying, by said computer, said node ... ;

identifying, by said computer, a parent node of said customer node;

assigning, by said computer, transaction data ... ;

setting, by said computer, said parent node equal to a new customer node;

if said new customer node is not a root node of said SBO tree, then identifying, by said computer, a new parent node of said new customer node ... ; and

selecting, by said merchant, at least one of products and promotional tools to be presented, by said computer, online to a customer"

For at least the reasons outlined above, Applicants respectfully submit that independent claim 1 is currently amended to satisfy the requirements of 35 U.S.C. §101 by tying the claimed method to that of a particular machine, i.e., a computer. Accordingly, Applicants further respectfully submit that previously presented, dependent claims 6-10, which depend from currently amended, independent claim 1, also satisfy the requirements of 35 U.S.C. §101. withdrawal of the rejection of claims 1 and 6-10 under 35 U.S.C. §101 is respectfully solicited.

II. The 35 U.S.C. 102(e) Rejection over Arganbright

A. The Arganbright Disclosure

[0004] It is a fact that Arganbright discloses, "The present invention is also directed to a system and method for combining a marketing business with a membership buying opportunity, so that Independent Business Owners participating in the marketing plan can introduce customers to a membership buying opportunity and earn bonuses or commissions based on the purchases by those members, while Members in the buying opportunity can consume products or, at their option, qualify to become Independent Business Owners." (Abstract, last sentence).

[0005] It is a fact that Arganbright discloses, "Another advantage of the present invention is that by providing opportunities for mass merchandising and targeted marketing, the present invention will allow business owners and the marketing company to gain a greater market share in particular product segments. The present invention also provides opportunities to identify new market segments so that new products and services may be produced to satisfy these new market segments. In addition, by building customer profiles and personalizing messages to individual customers, the present invention may allow the marketing company to increase sales of the existing products to current customers." (col. 10, lines 54-65).

[0006] It is a fact that Arganbright discloses, "A data warehouse is a central repository for all or significant parts of the data that an enterprise's various business systems collect. ... Data from various online transaction processing (OLTP) applications and other sources is selectively extracted and organized on the data warehouse database for use by analytical

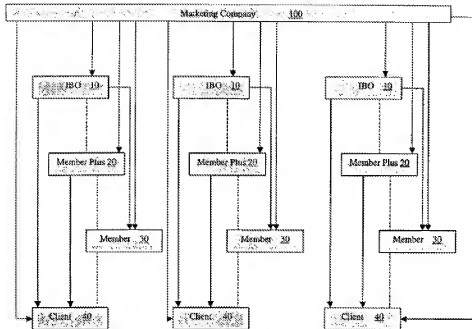
applications and user queries. Data warehousing emphasizes the capture of data from diverse sources for useful analysis and access, but does not generally start from the point-of-view of the end user or knowledge worker who may need access to specialized, sometimes local databases." (col. 15, lines 56-67).

[0007] It is a fact that Arganbright discloses, "In other words, by analogy, a Client preferably purchase products or services at a retail price from, for example, a retail department store, whereas an IBO purchases products or services from, for example, a distribution warehouse at a wholesale price. A Client preferably has exposure to a subset of the total core product and catalog lines for browsing, but may be shown all products if the SKU or identification number, or the exact brand name is known for a particular product and is searched for. Moreover, a Client is preferably not eligible to earn compensation or bonus income. The site provides an amusing and efficient place for Clients to shop, as product favorites may be continually target-marketed to the Client based upon their buying habits. Further, a Client is preferably exposed to specials and other deals to entice them to become Members of the marketing system." (col. 27, lines 1- 16).

[0008] It is a fact that Arganbright discloses, "Referring now to FIG. 2, there is shown an exemplary embodiment of the present invention. According to the present invention, it is preferred that a company's products and/or services are marketed and sold to customers (who may include, but is not limited to, Clients, Members, Members Plus, and IBOs) using an independent network of distributors in conjunction with direct retailing to the customer. ... each distributor within the distribution force may be compensated in a variety of ways including, but not limited to, multilevel compensation, which includes compensation on sales made directly by the distributor as well as sales made by others, commissions or retail markup on sales made only directly by the distributor, or other suitable types of commissions or compensation. Each distributor is preferably an Independent Business Owner (IBO), whose individual success depends upon that IBO's retailing efforts as well as the retailing efforts of those sponsored by the IBO in accordance with the present invention." (col. 29, lines 9-27).

[0009] It is a fact that FIG. 2 of Arganbright discloses

Fig. 2



[0010] It is a fact that Arganbright discloses, "As shown in FIG. 2, the present invention preferably comprises four different participation levels or categories within the marketing company's 100 distribution system of the preferred embodiment (e.g., Client 40, Member 30, Members Plus 20, and IBO 10). The solid arrows in FIG. 2 represent the exemplary methods by which products and/or services may be sold in accordance with an exemplary embodiment of the present invention. The broken lines in FIG. 2 represent the relationship between the various levels within a particular IBO's 10 personally sponsored group." (col. 29, lines 28-37).

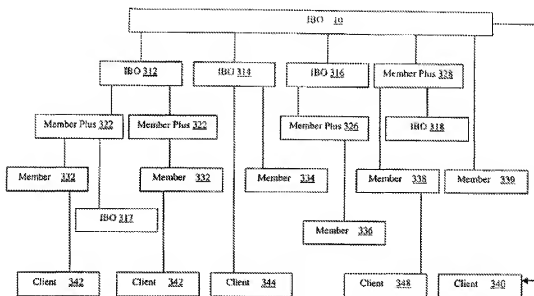
[0011] It is a fact that Arganbright discloses, "Client 40 preferably purchases products at retail prices, wherein the retail price, which is set by IBO 10 or Member Plus 20, is preferably higher than the IBO price. Client 40 may also have exposure only to a subset of the total core product and catalog lines. Clients 40 may be personally referred by IBO 10 or Member Plus 20. Unsolicited referrals will be preferably be offered Client 40 status and assigned to the appropriate IBO 10 as will be described below. Clients 40 may be serviced either directly by IBO 10 or Members Plus 20 or alternatively may be serviced by marketing company 100 on

behalf of IBO 10 or Member Plus 20, or a merchant partner." (col. 29, lines 51-59).

[0012] It is a fact that Arganbright discloses, "As can be seen in FIG. 3, an IBO's 10 personal group can comprise numerous subgroups which are linked to the original IBO 10 through various forms of sponsorship. One exemplary subgroup consists of the original IBO 10, a second sponsored IBO 312, Member Plus 322, Member 332, and Client 342. In an alternate subgroup, original IBO 10 sponsors Member Plus 328, who sponsors both Member 338 and second IBO 318. Likewise, Member 338 refers Client 348. Thus, it should be apparent to one of ordinary skill in the art that an IBO's 10 personal group may contain numerous subgroups, each of which can vary in the number and relationships between the different participation levels." (col. 31, lines 54-65).

[0013] It is a fact that FIG. 3 of Arganbright discloses,

Fig. 3

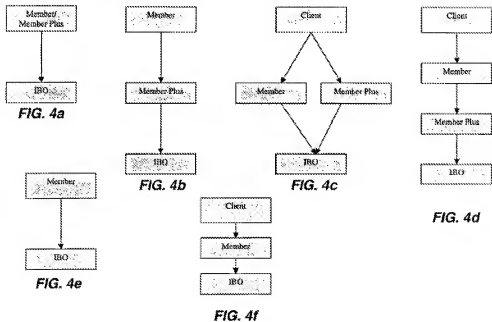


[0014] It is a fact that Arganbright discloses, "Moreover, a "Line of Sponsorship" or "LOS" refers to an IBO's direct heritage or "ancestry" in the marketing company business. In other words the LOS refers to an IBO's sponsor, the IBO's sponsor's sponsor, and so on. An

exemplary LOS is shown in FIG. 3 with reference, for example, to IBO 10, IBO 312 and IBO 317. It can be said that the line of sponsorship is the linkage between all IBOs in a specific organization, similar to a family tree. In addition, IBO 10 may refer to IBO 312 and IBO 317 as IBO's 10 "downline." It should be apparent to one having ordinary skill in the art that such a reference would be to those IBOs sponsored by IBO 10. Likewise, IBO 317 may refer to IBO 312 and IBO 10 as IBO's 317 "upline," which would denote those IBOs who have sponsored IBO 317 into the marketing system. " (col. 31, line 66, to col. 32, line 12).

[0015] It is a fact that Arganbright discloses, "Referring now to FIGS. 4a-4f, there are shown six exemplary methods by which a new customer can become associated or registered with the marketing system of the present invention. As shown in FIG. 4a, one embodiment of the present invention allows the customer to sign up as a Member/Member Plus to immediately begin the qualification process to becoming an IBO. In such an embodiment, the customer bypasses the Client level to register as a Member. Thus, the registered customer immediately enjoys the privileges and benefits of the Member Plus as described herein." (col. 32, lines 47-57).

[0016] It is a fact that FIGS. 4a-4f of Arganbright disclose,

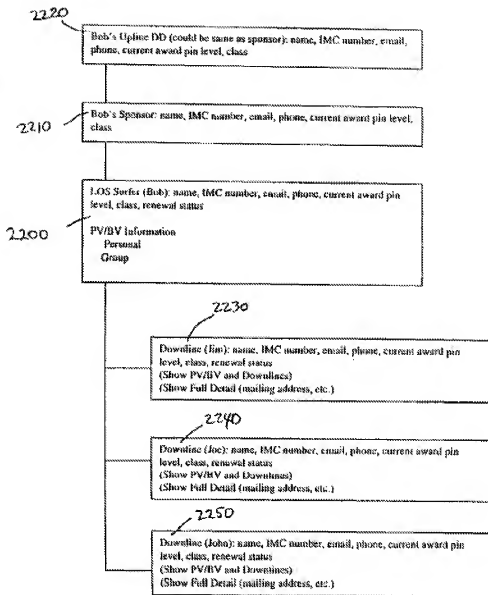


[0017] It is a fact that Arganbright discloses, "The navigation is provided by a plurality of web files associated with web site 102. In a preferred embodiment, the site is "served up" to shoppers differently depending on their membership or participation level. Merchandizing offers, for example, are targeted differently to each membership class (i.e., Client, Member, Member Plus, or Independent Business Owner (IBO))." (col. 41, lines 31-37).

[0018] It is a fact that Arganbright discloses, "Registered users are transparently assigned a profile that holds contact information such as address, phone and e-mail address. Users are asked for additional information in each main store to build on their perpetual profile. Profiles contain any information filled out on-line or through specific questionnaires and purchasing habits. Member profiles also determine how the site appears to the user, what products can be purchased, product prices, special deals, purchasing incentives, etc. In addition, real time click-stream information is collected and maintained, such as, but not limited to, purchase histories and page web files visited." (col. 51, lines 23-34).

[0019] It is a fact that FIG. 22 of Arganbright discloses,

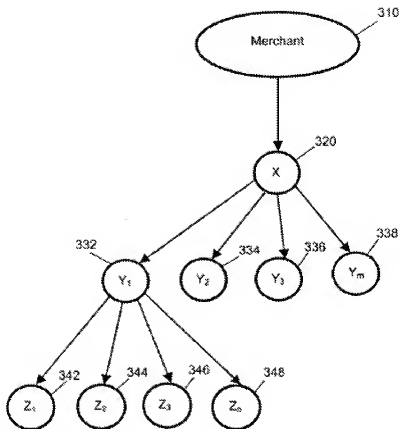
Fig. 22



B. Argument

[0020] It is a fact that the present invention discloses, "FIG. 3 shows a tree structure that is representative of relationships formed between customers and a merchant." (Pub. No. 2005-0125287, paragraph [0030]).

[0021] It is a fact that FIG. 3 of the present invention discloses,

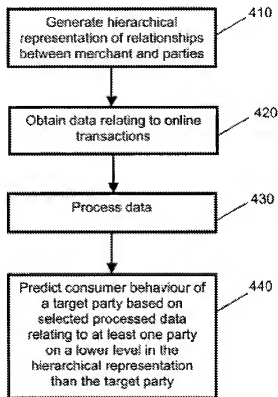


[0022] It is a fact that the present invention discloses, "The customers X and Y, are ancestors of each of the customers Z_1 to Z_n . In a related manner, each of the customers Y_1 to Y_m and the customers Z_1 to Z_n are descendants of the customer X. Furthermore, each of the customers Z_1 to Z_n are descendants of the customer Y_1 ." (Pub. No. 2005-0125287, paragraph [0033]).

[0023] It is a fact that the present invention discloses, "Purchasing behaviour and usage patterns of a customer may help the merchant learn the preferences of an ancestor of that customer. Hence, movement along the tree in the reverse direction can yield useful information about parent and ancestor nodes, which may otherwise not be revealed. FIG. 4 shows a flow

diagram of a method for learning consumer behaviour." (Pub. No. 2005-0125287, paragraph [0040]).

[0024] It is a fact that FIG. 4 of the present invention discloses,



[0025] It is a fact that the present invention discloses, "Specifically, by processing data while moving in a reverse (bottom to top) direction up the tree, the buying behaviour and usage patterns of the customer X can be predicted. This bottom-up approach can thus be used to predict intelligent information about the customer X, which may not be directly available, but which can be inferred from the behaviour of descendents of the customer X." (Pub. No. 2005-0125287, paragraph [0052]).

[0026] It is a fact that the present invention discloses, "FIG. 5 shows another flow diagram of a method for learning consumer behaviour." (Pub. No. 2005-0125287, paragraph [0054]).

[0027] It is a fact that FIG. 5 of the present invention discloses,

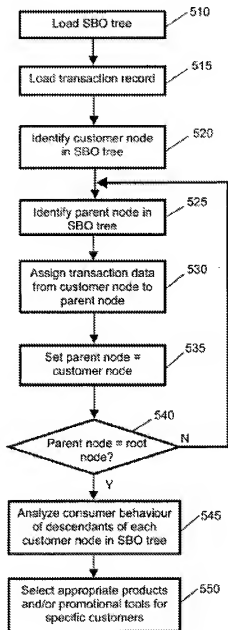


FIG. 5

[0028] It is a fact that the present invention discloses, "An SBO tree is loaded or made

available for accessing at step 510 and a particular transaction record is selected and loaded at step 515. A transaction record typically comprises data such as customer ID, product ID, transaction amount, etc. At step 520, the node in the SBO tree that is representative of the customer in the transaction record loaded in step 515 is identified. The customer node may be identified based on the customer ID, which is retrieved from the transaction record. At step 525, the parent node of the customer node identified in step 520, is identified. Data relating to the transaction is assigned from the customer node to the parent node at step 530 for tracking of ancestors for compensation or profit sharing as described hereinbefore. At step 535, the parent node is set to the selected customer node. If the new customer node (previous parent node) is the root node of the SBO tree (Y), at step 540, the consumer behaviour of the descendants of each customer node in the SBO tree is analysed at step 545. Any appropriate techniques or algorithms known in the art, such as correlation analysis, collaborative filtering and associative learning, may be applied to the transaction data assigned in step 530 for such analysis. At step 550, the results of the analysis are used to select appropriate products and/or promotional tools for specific customers." (Pub. No. 2005-0125287, paragraph [0055]).

[0029] In contrast, Arganbright discloses that, "Independent Business Owners participating in the marketing plan can introduce customers to a membership buying opportunity and earn bonuses or commissions based on the purchases by those members", (Arganbright, Abstract, last sentence); "a Client is preferably not eligible to earn compensation or bonus income", (Arganbright, col. 27, lines 10-11); and "each distributor within the distribution force may be compensated in a variety of ways including, but not limited to, multilevel compensation, which includes compensation on sales made directly by the distributor as well as sales made by others", (Arganbright, col. 29, lines 16-20).

[0030] That is, the invention of Arganbright is directed to the compensation of members at various levels of his organization and not to such features of the present invention as, "analyzing transaction data relating to consumer behavior of said all descendents of said new customer node", as recited in currently amended, independent claim 1, and as similarly recited in previously presented, independent claims 13 and 25, and to "[select] at least one of products and promotional tools to be presented to a customer", as also recited in currently amended,

independent claim 1, and as similarly recited in previously presented, independent claims 13 and 25.

[0031] Although Arganbright discloses a tree-like organizational structure, i.e., "As can be seen in FIG. 3, an IBO's 10 personal group can comprise numerous subgroups which are linked to the original IBO 10 through various forms of sponsorship", (Arganbright, col. 31, lines 54-56, and FIG. 3, above), and a "Line of Sponsorship" (LOS) refers to an IBO's direct heritage or "ancestry" in the marketing company business. In other words the LOS refers to an IBO's sponsor, the IBO's sponsor's sponsor, and so on. An exemplary LOS is shown in FIG. 3 with reference, for example, to IBO 10, IBO 312 and IBO 317", (Arganbright, col. 31, line 66 to col. 32, line 4, and FIG. 3, above), Arganbright's tree-like organizational structure is used but to determine compensation among the various levels, and does not process data, while moving in a reverse (bottom to top) direction up the tree, to predict intelligent information about a customer, which may not be directly available, but which can be inferred from the behavior of descendents of the customer (Pub. No. 2005-0125287, paragraph [0052]), in order to select a product or promotional tool to be presented to the customer, as described by the currently amended, independent claims of the present invention. (emphases added).

[0032] For at least the reasons outlined above, Applicants respectfully submit that Arganbright does not disclose, teach or suggest at least the present invention's features of: "assigning transaction data, loaded in said customer node, to said parent node, ... wherein said transaction data relates to consumer behavior; ... analyzing, by said merchant, transaction data of all descendents of said new customer node in said SBO tree; and selecting, by said merchant, at least one of products and promotional tools to be presented online to a customer, corresponding to said new customer node, based on said analyzing transaction data relating to consumer behavior of said all descendents of said new customer node", as recited in currently amended, independent claim 1, and as similarly recited in previously presented, independent claims 13 and 25. Accordingly, Arganbright fails to anticipate the subject matter of currently amended independent claim 1, previously presented independent claims 13 and 25, and dependent claims 6-10, 18-22, and 30-34. Withdrawal of the rejection of claims 1, 6-10, 13, 18-22, 25, and 30-34 under 35 U.S.C. §102(e) as anticipated by Arganbright is respectfully solicited.

III. Formal Matters and Conclusion

Claims 1, 6-10, 13, 18-22, 25, and 30-34 are pending in the application.

Applicants respectfully submit that the present claims satisfy the statutory requirements of 35 U.S.C. §101.

With respect to the rejections of the claims over the cited prior art, Applicants respectfully argue that the present claims are distinguishable over the prior art of record. In view of the foregoing, the Examiner is respectfully requested to reconsider and withdraw the rejections to the claims.

In view of the foregoing, Applicants submit that claims 1, 6-10, 13, 18-22, 25, and 30-34, all the claims presently pending in the application, are in condition for allowance. The Examiner is respectfully requested to pass the above application to issue at the earliest time possible.

Should the Examiner find the application to be other than in condition for allowance, the Examiner is requested to contact the undersigned at the local telephone number listed below to discuss any other changes deemed necessary.

Please charge any deficiencies and credit any overpayments to Attorney's Deposit Account Number 09-0441.

Respectfully submitted,

Dated: July 28, 2009

/Peter A. Balnave/

Peter A. Balnave, Ph.D.
Registration No. 46,199

Gibb I.P. Law Firm, LLC
2568-A Riva Road, Suite 304
Annapolis, MD 21401
Voice: (410) 573-5255
Fax: (301) 261-8825
Email: Balnave@gibbiplaw.com
Customer Number: 29154